

Remarks

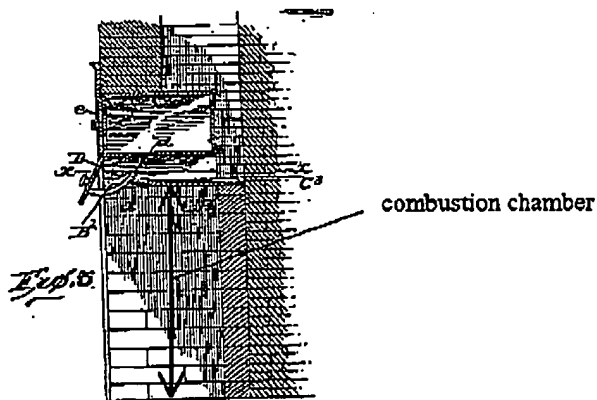
This is in response to the Office Action mailed December 11, 2003. Claim 2 has been canceled without prejudice or disclaimer. Claim 1 has been amended, support for the amendments being found, for example, at Figure 1, 2, and 4 of the present application. In addition, claims 3 and 9 have been editorially amended to correct dependencies and to be consistent with claim 1. No new matter has been added. Claims 1 and 3-9 remain pending. Reconsideration and allowance are respectfully requested.

I. Rejections Based on Heitland

In section 4 of the Office Action, claims 1-3 and 7-9 were rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Heitland, U.S. Patent No. 605,713. This rejection is respectfully traversed, and the correctness of the rejection is not conceded.

Claim 1 recites that at least a portion of the combustion chamber extends vertically along substantially an entire length of the shelf when the shelf is in the closed position adjacent to the front wall. It is advantageous to configure a fireplace in this manner so that the shelf is positioned adjacent to the combustion chamber when in a closed position to enhance heating of the shelf prior to use in the open position.

Heitland discloses a fireplace heater including a rectangular box B closed on all sides except the front and extending back to within a short distance of the back of the chimney of the fireplace. Heitland, page 1, lines 51-55 and Figures 1 and 3. A plate or guard B' is positioned between the box B and the combustion chamber to deflect heat into the room. Heitland, page 1, lines 55-65. In this configuration, the combustion chamber of the fireplace heater disclosed by Heitland extends only to the plate B', as illustrated below.



Heitland, Figure 3 (annotation added).

It is not conceded that the door E disclosed in Heitland functions as a shelf. However, regardless of the functionality of the door E, Heitland fails to disclose or suggest that at least a portion of the combustion chamber extends vertically along substantially an entire length of the shelf when the shelf is in the closed position adjacent to the front wall, as recited by claim 1. In Heitland, the combustion chamber extends only to the plate B', and therefore does not extend vertically along substantially an entire length of the door E when in the closed position.

For at least this reason, claim 1, as well as claims 2, 3, and 7-9 that depend therefrom, is allowable. Reconsideration and allowance are respectfully requested.

II. Rejections Based on Combination of Heitland and Wilkening

In section 5 of the Office Action, claims 4-6 were rejected under section 103(a) as being unpatentable over Heitland in view of Wilkening, U.S. Patent No. 4,515,146. This rejection is respectfully traversed, and its correctness is not conceded.

However, Wilkening does not remedy the shortcomings of Heitland noted above. Claims 4-6 depend from claim 1 and, as such, should be allowable for at least the same reason as that provided above with respect to claim 1. Reconsideration and allowance of claims 4-6 are respectfully requested.


III. Conclusion

None of the amendments or remarks contained herein should be construed as an admission as to the correctness of the rejections. The right to pursue claims of different scope in future prosecution is expressly reserved.

In view of the above amendments and remarks, all claims should now be in condition for allowance. Favorable reconsideration is respectfully requested. The Examiner is encouraged to contact the undersigned Attorney with any questions regarding this application.

Respectfully submitted,
MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: Mar 11, 2004


Robert A. Kalinsky
Reg. No. 50,471
RAK